

In the Matter of:)
)
Proposed Schedule for the)
East Altamont Energy Center) Docket No.
Review Process) 01-AFC-4
)

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

COMMITTEE MEMBERS PRESENT

William Keese, Chairman/Presiding Member

Robert Pernell, Commissioner/Associate Member

HEARING OFFICER AND ADVISOR PRESENT

Major William, Jr., Hearing Officer

Scott Thomashefsky, Advisor to Commissioner Keese

Ellen Townsend, Advisor to Commissioner Pernell

PUBLIC ADVISOR PRESENT

Roberta Mendonca, Public Advisor

STAFF AND CONSULTANTS PRESENT

Cheri Davis, Siting Project Manager

Lisa DeCarlo, Staff Counsel

APPLICANT

Greggory L. Wheatland, Attorney
Ellison, Schneider & Harris, LLP

Gary S. Rubenstein
Sierra Research

Susan Strachan, Principal
Strachan Consulting

Kris Helm, Consultant
Calpine

INTERESTED PARTIES

Dave Swanson, Team Lead, Environment
Western Area Power Administration

INTERVENORS AND CONSULTANTS

Robert Sarvey, Individual

Jim Swaney
San Joaquin Air Pollution Control District
(telephonically)

MEMBERS OF THE PUBLIC

Jackie Williams (telephonically)

Joanne Young
Pacific Northwest (telephonically)

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P R O C E E D I N G S

10:04 a.m.

CHAIRMAN KEESE: This is a committee scheduling conference by a committee of the California Energy Commission on the proposed East Altamont Energy Center, docket number 01-AFC-4.

I'm Bill Keese, chairman of the Commission and presiding member, and on my right is my advisor, Scott Thomashefsky. We're also joined by Commissioner Pernell, the second member of the committee, and his advisor, Ellie Townsend-Smith.

HEARING OFFICER WILLIAMS: Excuse me, Mr. Chairman, it's now Ellie Townsend.

CHAIRMAN KEESE: Oh, well, congratulations.

MS. TOWNSEND: Thank you.

COMMISSIONER PERNELL: She's still beaming.

(Laughter.)

CHAIRMAN KEESE: Major Williams, our hearing officer, will be conducting the rest of this conference.

Major?

HEARING OFFICER WILLIAMS: Thank you,

1 Mr. Chairman. The Commission's public advisor,
2 Roberta Mendonca, is present. If anyone has any
3 questions about the process today or the purpose
4 of this scheduling conference, Roberta is the
5 person to address those questions to.

6 And Roberta, if you have any comments at
7 the outset, I understand there may be some public
8 members calling in?

9 MS. MENDONCA: My office received a
10 phone call yesterday and I believe Jackie Williams
11 indicated an interest in calling in, and we're
12 trying to confirm that she may or may not be on
13 the line yet --

14 MS. WILLIAMS: Yes, I am.

15 MS. MENDONCA: She is?

16 MS. WILLIAMS: I'm on the line.

17 MS. MENDONCA: Okay. So she has
18 contacted my office, and then several e-mails have
19 come in which I've made available, and, of course,
20 I'll be available to anybody in the audience.
21 Thank you.

22 HEARING OFFICER WILLIAMS: Yes.
23 Roberta, we noted that the e-mails that came in
24 have to do with the matter involving CARE and
25 Michael Boyd. That's scheduled for the Commission

1 meeting on the 14th, and we would prefer not to
2 deal with any matters related to CARE and Michael
3 Boyd at this hearing, which is merely for purposes
4 of scheduling later evidentiary hearings in this
5 matter.

6 So hopefully, those public folks will
7 indulge us on that and save their comments
8 pertaining to items of intervention for the
9 business meeting, the Commission business meeting
10 on August 14th.

11 MS. MENDONCA: Yes. My office is making
12 the business meeting agenda available to the
13 people that have contacted us and have indicated
14 that that's when that topic is up.

15 HEARING OFFICER WILLIAMS: Yes. So if
16 the folks on the phone can hear me, if you do have
17 questions about the CARE petition and Michael
18 Boyd, please address those matters to the public
19 advisor's office. We will not be entertaining
20 that matter here today, which is limited to our
21 latest scheduling. At the Commission business
22 meeting on the 14th, you will have full
23 opportunity to air any public comment that you may
24 have pertaining to CARE and Michael Boyd's
25 petition to intervene.

1 MS. MENDONCA: Thank you.

2 HEARING OFFICER WILLIAMS: Thank you.

3 If the parties could introduce
4 themselves.

5 MR. WHEATLAND: Yes, good morning. I'm
6 Greg Wheatland. I'm the attorney for the
7 applicant. And with me at the table this morning
8 is Susan Strachan, one of our environmental
9 project managers.

10 HEARING OFFICER WILLIAMS: Thank you,
11 sir.

12 Staff?

13 MS. DAVIS: My name is Cheri Davis and
14 I'm the project manager for the Energy Commission
15 staff. To my right is Lisa DeCarlo. She's staff
16 counsel assigned to this case.

17 HEARING OFFICER WILLIAMS: I don't see
18 Western. Is anybody here from Western?

19 Sir, could you come up to the table and
20 introduce yourself, please.

21 MR. SWANSON: Yes. My name is Dave
22 Swanson. I'm with Western Area Power
23 Administration. I'm taking over for Kirk
24 Sornborger who has taken another position at
25 Western. He's now in our transmission system

1 planning office. And Miriam is here from Western.
2 She's in that office. And Krishna Shah, project
3 manager, is here also.

4 HEARING OFFICER WILLIAMS: If you could
5 give your business cards to our court reporter at
6 some point so we get your identification correct
7 in our record, we would appreciate it. Thank you.

8 Is Bay Area Air Quality Management
9 District, is there anyone here representing the
10 Bay Area, or are they on the phone? No?

11 I see Mr. Sarvey is here, who is an
12 intervenor. Good morning, sir.

13 Department of Water Resources, anybody
14 here? Department of Water Resources?

15 Byron Bethany here? No?

16 Okay. And San Joaquin Unified Air
17 Pollution Control District, anybody here? On the
18 phone? No.

19 Are there any members of the public here
20 who would like to identify themselves at this
21 point? If there are folks here, Roberta is the
22 person that you need to touch base with, and we
23 will acknowledge you whenever you like after each
24 topic as we go through it.

25 For purposes of our discussion today,

1 the committee's agenda will be taken from our
2 third revised scheduling order which is dated
3 July 17th. At the end of each section of our
4 discussion, we will first take any comments or
5 questions from the participating agencies and
6 intervenors.

7 During the course of our discussions
8 under each section there will be issues concerning
9 the committee's issuance of a new schedule for
10 this project. I think, with respect to the
11 schedule, the committee has in mind, and I'll just
12 give you this information now so you can think
13 about it during the course of your presentation.
14 The committee is looking at conducting a
15 prehearing conference on October 7th, and
16 beginning evidentiary hearings on the 15th and
17 16th of October, and the following week, on the
18 21st and the 22nd of October. And getting this
19 matter completed during the week of October 21st
20 at the latest.

21 So that's our tentative plan. Of
22 course, that's subject to some modification if the
23 committee feels there is a need to modify the
24 schedule. But I wanted you to have that
25 information for your calendars, and we can talk

1 about it some more as we proceed.

2 COMMISSIONER PERNELL: Just one question
3 on that. Getting the matter completed meaning
4 getting it to the Commission for final approval,
5 or --

6 HEARING OFFICER WILLIAMS: No, if we
7 conclude evidentiary hearings in the middle of
8 October, hopefully we'll have briefs in and we're
9 looking probably at a presiding member's proposed
10 decision in December.

11 COMMISSIONER PERNELL: Okay.

12 HEARING OFFICER WILLIAMS: So, with
13 that, we'll proceed. And, again, I want to state
14 that it's the committee's understanding that many
15 or most of the issues have been condensed to a
16 point where there doesn't appear to be really a
17 lot of areas that are in dispute.

18 So because there doesn't appear to be a
19 lot of areas in dispute, there may be some way we
20 can process the topics in a very efficient way so
21 that we don't drag the schedule as it relates to
22 issues that may be in dispute.

23 So that's the committee's intent right
24 now, but if you have something to add to that as
25 we proceed to air quality, you're certainly free

1 to do so.

2 Mr. Wheatland?

3 MR. WHEATLAND: I would like to comment
4 at the appropriate time on the committee's
5 schedule or suggested schedule. Is this the right
6 time to do that?

7 CHAIRMAN KEESE: I don't think so,
8 Mr. Wheatland. Major has given you our
9 preliminary thinking, but I think we'd like to
10 hear everything today and let's hear from both
11 sides so that everybody knows where they are, and
12 then we'll talk about the schedule.

13 MR. WHEATLAND: Very good.

14 So you wish to address first air
15 quality?

16 HEARING OFFICER WILLIAMS: Yes, please.

17 MR. WHEATLAND: Well, we have submitted
18 to you status report number six, which addresses
19 each of the questions that were posed by the
20 committee to -- and I presume, and I know that you
21 have read it. I didn't see anything from the
22 staff on these subjects in writing, but very
23 briefly, with respect to the air quality issue,
24 the final determination of compliance has been
25 finalized and it was issued on July 24th. The

1 FDOC contains no substantive differences as
2 compared to the PDOC, except for reductions in
3 emission rates, determined to be BACT for NOx and
4 CO.

5 As to the committee's question regarding
6 the status of discussions concerning the inter-
7 and intradistrict mitigation measures, the
8 applicant has made every effort to respond to the
9 committee's direction from the last hearing to
10 take seriously the concerns of the San Joaquin
11 APCD regarding mitigation for project impacts
12 located within the San Joaquin Valley. We have
13 entered into a tentative agreement with the staff
14 of the district regarding these issues, and we
15 expect that the agreement will be fully ratified
16 by the district's governing board prior to the
17 close of the record in this proceeding.

18 So we think that there is good news in
19 both areas, both in having reached an agreement
20 with the San Joaquin district, and with now having
21 a complete FDOC.

22 HEARING OFFICER WILLIAMS: Thank you.

23 Staff, your comments?

24 MS. DAVIS: Staff is pleased that the
25 final determination of compliance is in. Staff

1 has put considerable effort into resolving the
2 ongoing and troublesome issues associated with air
3 quality. It's a unique situation that we're
4 working with two air districts with this case.

5 Staff stands by its determination that,
6 as proposed, there will be unmitigated local
7 impacts. And, as you know, staff proposed a
8 mitigation package approximately two months ago
9 and held a number of workshops with the objective
10 of obtaining comments and refining staff's
11 proposal. Staff finally received comments on its
12 proposal on July 12th from the applicant as well
13 as the San Joaquin Valley Air Pollution Control
14 District.

15 The applicant then proposed its own
16 mitigation package on July 12th and staff is
17 putting a considerable amount of time and effort
18 into evaluating the various measures in order to
19 verify their effectiveness for our final staff
20 assessment. And the applicant just yesterday
21 provided information about the specific agreement
22 that they've worked out with the San Joaquin
23 Valley Air Pollution Control District, which will
24 require additional staff time to evaluate.

25 We believe that there are still

1 unresolved issues associated with air quality that
2 will need to be resolved through the hearing
3 process.

4 HEARING OFFICER WILLIAMS: Okay.

5 MR. WHEATLAND: I'd like to just add one
6 thing. As we go through the discussion today, I
7 don't want to leave any impression that the
8 applicant has been in any way tardy in submitting
9 information to the staff regarding any of the
10 subject areas that have been presented. We did
11 provide some information yesterday to the staff,
12 because that information was requested yesterday.

13 We're making every effort to give the
14 staff all of the information that they request and
15 as quickly as possible.

16 HEARING OFFICER WILLIAMS: What was that
17 information again? Excuse me, Mr. Wheatland, what
18 was the information that was provided yesterday?

19 MR. WHEATLAND: My understanding is it
20 was some supporting data explaining the basis of
21 the agreement that we've entered into with the San
22 Joaquin Air Quality District. It's some tables
23 that explain the basis of the calculations for the
24 agreement with the district.

25 HEARING OFFICER WILLIAMS: Okay. I

1 think we have the district now on the telephone.

2 Mr. Swaney?

3 MR. SWANEY: Yes. Are you able to hear
4 me now?

5 HEARING OFFICER WILLIAMS: Yes, we are.
6 Thank you, good morning.

7 We are talking about air quality.

8 MR. SWANEY: Okay.

9 HEARING OFFICER WILLIAMS: And we're
10 talking about the agreement or the pending
11 agreement between the district and the applicant.
12 And apparently, staff had requested some figures
13 and what have you yesterday from the applicant
14 that pertain to that agreement.

15 Do you have any comments that you'd like
16 to make at this time, Mr. Swaney?

17 MR. SWANEY: Although we have an
18 agreement in principal with it, we haven't had a
19 chance to fully look at it. There may be some --
20 I would agree with the statement that we have a
21 tentative agreement.

22 HEARING OFFICER WILLIAMS: Okay. Have
23 you been in any discussions with staff, Commission
24 staff about the particulars of the agreement or do
25 you plan to do that?

1 MR. SWANEY: We have not been in
2 discussions on this specific agreement.

3 HEARING OFFICER WILLIAMS: I think the
4 committee's interest is just to make sure that all
5 the parties are talking and that there are no
6 outstanding matters that can be addressed by the
7 parties, which, of course, includes staff and
8 applicant. So we just need to be assured that you
9 are willing to do that.

10 MR. SWANEY: Most definitely.

11 HEARING OFFICER WILLIAMS: Thank you.

12 MS. DeCARLO: And, if I may add, staff
13 has been in some generalized discussions with the
14 district over potential mitigation options that
15 could be incorporated with the district;
16 unfortunately, the district is an intervenor and
17 so that presents a little bit of difficulty in
18 having substantive discussions with them outside
19 of an open meeting.

20 MR. RUBENSTEIN: Mr. Williams?

21 HEARING OFFICER WILLIAMS: Yes?

22 MR. RUBENSTEIN: On that last point,
23 it's my understanding that --

24 HEARING OFFICER WILLIAMS: For the
25 record, please?

1 MR. RUBENSTEIN: For the record, my name
2 is Gary Rubenstein with Sierra Research. We're
3 air quality consultants for the applicant.

4 It's my understanding that approximately
5 two weeks ago, several members of the Commission's
6 air quality staff, in fact, did meet with
7 representatives of the San Joaquin district staff.
8 Mr. Swaney was very careful to say that they did
9 not discuss the contents of this specific
10 agreement; however, the purpose of that meeting,
11 as it was related to me, was to discuss how the
12 San Joaquin District and the Commission staff
13 could work together on mitigation implementation
14 for both this project and other projects in
15 similar situations.

16 So I think that perhaps there has been a
17 lot more coordination than might have been
18 apparent from what you've heard.

19 I also wanted to point out, in response
20 to some of the comments that Ms. Davis made, that
21 the staff did not, in fact, issue a proposed
22 mitigation package two months ago. They quite
23 specifically indicated during workshops that it
24 was an example list of potential candidate
25 mitigation measures. And the reason why we did

1 not submit written comments until July 12th is
2 July 12th is the date that written comments were
3 requested from all parties, including the
4 applicant, and we met that deadline.

5 And then finally, we did not submit our
6 own mitigation package. We had made that very
7 clear during the last workshop that what we were
8 tasked with was putting together a consensus
9 mitigation package representing input from all the
10 parties, and that was done on July 19th, which was
11 the date we had committed to do that following the
12 last workshop.

13 HEARING OFFICER WILLIAMS: The question
14 I have is really I guess more procedure in that
15 San Joaquin is an intervenor. For purposes of
16 evidentiary hearings, of course, we require
17 witness testimony to be filed and that sort of
18 thing.

19 San Joaquin, are you planning to do
20 that, are you aware of those requirements that you
21 file prefiled testimony and that sort of thing?

22 MR. SWANEY: Yes, I am aware of that.

23 HEARING OFFICER WILLIAMS: Do you plan
24 to take an active role in that respect at the
25 evidentiary hearings in October?

1 MR. SWANEY: Quite possibly. It depends
2 on how the proceedings, all of our concerns are
3 addressed.

4 HEARING OFFICER WILLIAMS: Because, you
5 know, it would perhaps save time if we could do it
6 by stipulation, if the parties could get together
7 and draft up a stipulation that covers the pending
8 agreements and that sort of thing. Then you
9 wouldn't necessarily be tasked with having to show
10 up at the hearings, which will be down in the
11 Tracy area.

12 So, again, for efficiency's sake, I
13 would ask the parties to try and get together, and
14 for purposes of filing testimony and that sort of
15 thing, to draft stipulations and do whatever you
16 can so that we alleviate the need to drag
17 witnesses in and talk about these things at the
18 hearings, which, of course, could eat up a lot of
19 time.

20 Yes, sir?

21 MR. WHEATLAND: As Chairman Keese is
22 aware, we were able to handle the recent Russell
23 City hearings very efficiently by concluding the
24 evidentiary hearings in just one day, even though
25 there were also some disputed issues outstanding.

1 The way that we were able to do that is
2 that the applicant submitted testimony on all of
3 the subject areas. For many of them where there
4 were no contested issues, our testimony basically
5 stated that it supported the conclusions and
6 recommendations of the Commission staff.

7 And that testimony, those portions of
8 the AFC and the applicant's testimony were
9 accepted into the record by stipulation, as you
10 suggest, which saved a great deal of hearing time
11 and avoided having to put each individual witness
12 on the stand. And then we only had to swear in
13 the witness and have cross-examination on those
14 very limited issues that were contested. And I
15 hope that we can use a similar model in this
16 proceeding as well.

17 HEARING OFFICER WILLIAMS: Absolutely.

18 MR. RUBENSTEIN: The applicant will do
19 everything it can to, as soon as the AFC comes
20 out, to promptly submit its testimony on both
21 contested and uncontested issues. And hopefully,
22 the turnaround on the uncontested issues can be
23 very quick.

24 HEARING OFFICER WILLIAMS: Yes. What I
25 propose to do is the committee has indicated that

1 we could get out a prehearing conference order
2 well ahead of the time that we normally publish
3 one, and take up all the, certainly all the
4 uncontested issues by stipulation. That would
5 certainly save us a lot of time.

6 MS. DAVIS: And staff would agree to
7 that procedure, to stipulate to the undisputed
8 issues.

9 HEARING OFFICER WILLIAMS: Okay. So,
10 you know, basically, we'll save up our hearing
11 time for those areas that we need to present
12 witnesses and that sort of thing.

13 CHAIRMAN KEESE: Mr. Swaney, are you
14 with us?

15 MR. SWANEY: Yes.

16 CHAIRMAN KEESE: You indicated you have
17 a tentative agreement supported by staff. What is
18 your intention as to taking it to your board? Is
19 that after our hearing process or prior to our
20 hearing process?

21 MR. SWANEY: It would be prior to your
22 hearing process.

23 CHAIRMAN KEESE: Thank you.

24 MS. DeCARLO: If I can clarify, the
25 tentative agreement is not supported by Commission

1 staff.

2 CHAIRMAN KEESE: No, I understand that.

3 MS. DeCARLO: Okay. I just wanted to
4 make sure.

5 CHAIRMAN KEESE: Right.

6 HEARING OFFICER WILLIAMS: Yes, and
7 staff, perhaps again, in the interest of trying to
8 reach an agreement and to move things forward as
9 much as possible, if you could maybe have a
10 workshop or something with the air district and
11 applicant in some forum where you can maybe try to
12 discuss and reach agreement on as many issues as
13 possible.

14 MS. DeCARLO: And we initially
15 anticipated having a subsequent workshop to the
16 one we had a couple of weeks ago on air quality;
17 however, we had indications from the applicant
18 that there would be no positive outcome from such
19 a workshop. So, therefore, we decided at this
20 point not to engage in one and to just review what
21 they've provided so far and to issue our FSA based
22 upon that.

23 HEARING OFFICER WILLIAMS: Mr. Swaney --

24 MS. DAVIS: Also it's a concern over
25 schedule. At this point if we were to hold a

1 workshop, it could interfere with staff's ability
2 to complete the final staff assessment in a timely
3 manner.

4 HEARING OFFICER WILLIAMS: Okay. Well,
5 we know that -- we know certainly that air is
6 going to be one of those issues that we will be
7 dealing with at the hearings. And again, to the
8 extent that we can wean away all of these
9 uncontested areas and just get to the heart of the
10 issues for our hearing, then I think that would be
11 a good way to proceed.

12 CHAIRMAN KEESE: Mr. Swaney, let me ask
13 you one more question. Does this tentative
14 agreement that you've come to involve more than
15 one of the plants that we're talking about, that
16 are being considered for siting?

17 MR. SWANEY: This tentative
18 agreement --

19 CHAIRMAN KEESE: We lost you there.

20 MR. SWANEY: Sorry, can you hear me now?

21 CHAIRMAN KEESE: We had the words, "This
22 tentative agreement." And my question is, is it a
23 tentative agreement regarding East Altamont or is
24 it a broader agreement?

25 MR. SWANEY: It's an agreement specific

1 to East Altamont.

2 CHAIRMAN KEESE: Thank you.

3 COMMISSIONER PERNELL: Mr. Williams?

4 HEARING OFFICER WILLIAMS: Yes, sir?

5 COMMISSIONER PERNELL: A question for
6 staff and perhaps the applicant, I notice that
7 there are more than one air quality district.
8 Does the Bay Area Air Quality Management District
9 have any issues that need to be resolved?

10 MS. DAVIS: No, and I believe that the
11 final determination of compliance verifies that,
12 that they feel that the project has no impacts and
13 complies with all of their laws, ordinances,
14 regulations, and standards.

15 MR. WHEATLAND: That's our
16 understanding.

17 COMMISSIONER PERNELL: Thank you.

18 HEARING OFFICER WILLIAMS: Okay. I
19 think, then, that will close out our discussion on
20 air --

21 MR. SARVEY: Can I say a couple of
22 things?

23 HEARING OFFICER WILLIAMS: Oh,
24 Mr. Sarvey, sorry. Go right ahead.

25 MR. SARVEY: I have seen staff's local

1 mitigation package, but I haven't seen anything
2 from the applicant. And I think it would go far
3 to resolving these air quality issues if the
4 applicant could sort of issue some sort of air
5 quality mitigation, local mitigation package that
6 has been discussed at now three workshops and we
7 still haven't seen any proposal at all.

8 And that's sort of hampering any type of
9 discussion that could be had, you know, having a
10 meeting of the minds on this issue. And also, I
11 believe we have a cumulative air quality analysis
12 issue also outstanding.

13 HEARING OFFICER WILLIAMS: I believe the
14 applicant did file the consensus mitigation plan;
15 is that right?

16 MR. WHEATLAND: It's my understanding it
17 was filed and served on July 19th. You don't have
18 a copy of that, Bob?

19 MR. SARVEY: I have not. I thought that
20 you provided a list of mitigation measures but you
21 have made no proposal at this point for local
22 mitigation package. That's what I'm talking
23 about.

24 MR. WHEATLAND: The consensus agreement
25 that we put together included a list of measures,

1 and it also included a mitigation plan that would
2 guide the San Joaquin district in how they would
3 specifically select which measures to use.

4 But the discussion we had at the last
5 workshop was that the San Joaquin district was
6 going to be the agency that selected which
7 measures would be implemented.

8 MR. SARVEY: Right. I've seen all of
9 the issues with the San Joaquin Valley Air
10 Pollution Control District, but I was talking
11 about staff's local mitigation package and your
12 response to it, and I haven't seen in your
13 response, you know, a list of things that you're
14 offering to do in the local area to offset.

15 HEARING OFFICER WILLIAMS: Mr. Sarvey, I
16 think what is involved is that applicant's
17 consensus plan that they're working out with the
18 San Joaquin air district is really sort of their
19 response to staff's mitigation plan. So those two
20 elements are kind of the two --

21 MR. SARVEY: Well, in all the workshops
22 we've discussed the CEQA issues and I know the
23 applicant doesn't feel there are any CEQA issues,
24 but staff has proposed mitigation to address those
25 issues, and I've seen lists that the applicant has

1 prepared to be considered, but I've seen no list
2 that they're offering at this point in time.

3 HEARING OFFICER WILLIAMS: Yeah, well,
4 the consensus plan is really what they're
5 offering, and it would be -- Correct me if I'm
6 wrong, it would be administered by the San Joaquin
7 air district, and it includes most of the
8 proposals that staff listed in some form or
9 fashion in its draft mitigation plan.

10 So that's what we're trying to -- that's
11 what everybody is trying to work with. Those are
12 the operative documents. So, you know, how that
13 comes out --

14 MR. SARVEY: Well, what I'm saying is
15 we've had three workshops and staff has presented
16 their proposals and said this is what we want to
17 go with, and the applicant hasn't.

18 HEARING OFFICER WILLIAMS: So you're
19 suggesting that perhaps, in other words --

20 MR. SARVEY: The applicant make a
21 counteroffer or something or a workshop or
22 something so we can all agree before the
23 evidentiary hearings so we don't have to take up
24 time and all that with those issues.

25 HEARING OFFICER WILLIAMS: Yeah, right.

1 Well, that's kind of what we'd like to see happen
2 as well, but -- I don't know if we recommended
3 that that happen, but it certainly would save a
4 lot of time, I think. But it's really a matter of
5 logistics at this point, whether or not staff can
6 manage to do something along those lines within
7 their scheduling.

8 COMMISSIONER PERNELL: Mr. Sarvey, let
9 me understand what your question is. Staff put
10 forth a mitigation package, and my understanding
11 is the applicant agreed with the package, or maybe
12 not. So what he's saying is do you have a
13 proposal of your own?

14 MR. RUBENSTEIN: The applicant, based on
15 direction we received from the staff and
16 recommendations we received from all the parties,
17 prepared this draft consensus mitigation plan.
18 The mitigation plan that we prepared includes all
19 of the measures that the staff had proposed, in
20 one form or another, plus additional measures that
21 were proposed by the San Joaquin district.

22 It does not say that the mit package
23 will be five tons of emission reductions for
24 measure one and ten tons of reductions for measure
25 two. And the reason why it doesn't say that is

1 because at the last workshop the San Joaquin
2 district was quite emphatic in indicating that
3 when they shop around, if you will, to buy the
4 best reductions that they can, it would unduly
5 bind them if they had to specifically get certain
6 tons of reductions from certain categories.

7 And in trying to reconcile the
8 objectives of the staff and the intervenors and
9 the district into a single package that we hope
10 everyone can agree with, we bowed to that one
11 particular request of the San Joaquin district and
12 did not specify exactly how the funds would be
13 presented but instead in the mitigation plan we
14 laid out a series of objectives that the district
15 would have to meet.

16 COMMISSIONER PERNELL: Right, but I
17 think what I'm trying to get to is the document
18 that you've presented was your version of the
19 mitigation plan.

20 MR. RUBENSTEIN: It's broader than that.
21 It includes measures that personally I would not
22 recommend, but it includes those measures because
23 others have recommended them.

24 But I guess to be more specific, it is
25 our recommended resolution of this issue. It is

1 our proposal for how this issue should be
2 resolved, with an agreement that all of the
3 parties would sign on to.

4 COMMISSIONER PERNELL: Right. The
5 question is that you haven't submitted anything.
6 My question to you is the document that you
7 submitted is your version of a mitigation plan
8 such as the staff has submitted.

9 MR. RUBENSTEIN: That's correct.

10 COMMISSIONER PERNELL: And I think that
11 answers Mr. Sarvey's question, whether or not you
12 actually submitted anything.

13 CHAIRMAN KEESE: And the answer, the
14 second part of it is that when we see the FSA,
15 we'll know what staff's reaction to it is. Staff
16 right now has indicated that they are accumulating
17 more information.

18 MR. SARVEY: Well, I think the reason
19 I'm confused is from the applicant's status report
20 here, he's indicating that he plans to provide a
21 million dollars, close to a million dollars to the
22 San Joaquin Air Pollution Control District, but I
23 don't see anything in there in the local
24 mitigation measures that staff has proposed in
25 addition to the one million dollars that the San

1 Joaquin Valley Air Pollution Control District will
2 receive to offset their concerns in the matter.

3 That's the point that I'm trying to
4 make, that there is no concrete offer from the
5 applicant, and these issues could probably be
6 resolved well before the hearing, had we had some
7 sort of offer in that form.

8 CHAIRMAN KEESE: So what you have just
9 indicated is that you expect that the applicant
10 will do something for San Joaquin and do something
11 else in addition for the Energy Commission?

12 MR. SARVEY: That's been the discussions
13 in the workshops, yes, that the Energy Commission
14 will handle the CEQA issues and the Air Pollution
15 Control District is an intervenor on its own and
16 is handling its own issues.

17 So that's my understanding. Maybe I
18 need to be corrected on that point, but that's how
19 I've -- I've been at all three workshops, and
20 that's --

21 MR. WHEATLAND: Well, I think one
22 important correction is that the San Joaquin
23 district doesn't have direct permit authority over
24 this plan. That falls with the Bay Area Quality
25 Management district. The San Joaquin district is

1 an intervenor. They do have CEQA concerns, and
2 that is the context in which we have had the
3 discussions with them, is to resolve their CEQA
4 concerns.

5 I think what it boils down to is that
6 there may be a difference of opinion as to how
7 these funds may be administered. One approach is
8 to allow the San Joaquin district to administer
9 the distribution of funds for the benefit of the
10 local area. Another approach would be to have a
11 more specific shopping list that the Commission
12 would mandate. That's an issue that may have to
13 go to evidentiary hearings.

14 I think that's probably where the
15 difference lies at this point.

16 CHAIRMAN KEESE: Yes. And, as far as
17 the actual siting of the power plant, that air
18 district has signed off with no impacts.

19 MR. SARVEY: Right, I understand that.
20 In their FDOC they have left the CEQA issues up to
21 the Energy Commission as they mentioned many times
22 in their responses to the intervenor and comments
23 at the end of the FDOC.

24 And, as I said, I'm confused, is Calpine
25 saying that the million dollars is going to be the

1 local mitigation package or is it going to be
2 that --

3 CHAIRMAN KEESE: Well, you know, I
4 really think -- This is a scheduling conference.

5 COMMISSIONER PERNELL: Yeah,
6 Mr. Chairman --

7 CHAIRMAN KEESE: We've heard pretty
8 clearly where we are in the process, and until we
9 hear staff's response, either when the FSA comes
10 out or earlier, whenever staff responds to it, we
11 will know and you will know where we are with
12 respect to what San Joaquin has submitted, as
13 acceptable to San Joaquin.

14 COMMISSIONER PERNELL: Yeah,
15 Mr. Chairman, I would submit that this level of
16 detail will come out in the evidentiary hearing,
17 and that this is a scheduling conference. I would
18 certainly concur with your conclusion there.

19 HEARING OFFICER WILLIAMS: Now, is
20 cumulative air quality, you had a concern there,
21 Mr. Sarvey?

22 MR. SARVEY: Oh, yeah. Back in January,
23 Calpine was relieved of their obligation to do a
24 cumulative air quality study in the area. And to
25 this date I still haven't seen a cumulative air

1 analysis of the three new additional plants and
2 the new developments going on in the area
3 including all of the residential developments as
4 well, an I thought that was an issue that was
5 still outstanding.

6 CHAIRMAN KEESE: I think we addressed it
7 at the last scheduling conference, if i'm not
8 mistaken.

9 Staff, could you inform us on where we
10 are? I assume that will be in the FSA as well.

11 MS. DeCARLO: Yes, it will.

12 CHAIRMAN KEESE: Okay. So that will be
13 dealt with in the staff's analysis as well.

14 HEARING OFFICER WILLIAMS: Okay. So I
15 think that that will conclude our discussions on
16 air.

17 We have a public member, Joanne Young,
18 representing Pacific Northwest.

19 Ms. Young? Can you hear me?

20 Okay, maybe she hung up.

21 PUBLIC ADVISOR MENDONCA: Either that or
22 she's on hold.

23 HEARING OFFICER WILLIAMS: Okay. We'll
24 move on, then, to number two, biological visual.

25 MR. WHEATLAND: All right. Well,

1 there's more good news in this area. On
2 July 31st, 2002, the US Fish and Wildlife Service
3 issued the biological opinion for this project,
4 finding that all of the impacts from the project
5 will be mitigated to a level of insignificance.

6 So this is a very important milestone in
7 the project and, in fact, places the project ahead
8 of many other projects certified by the
9 Commission. Because, as you know, that biological
10 opinion is oftentimes received much later in the
11 process. So we're delighted to have that
12 resolved.

13 Regarding the issue of the landscaping
14 plan, the applicant in the early part of this year
15 met with all of the parties, the visual resource
16 staff and the biological resources staff, to try
17 to find a landscaping plan that would satisfy both
18 of these important areas. And on April 3rd, 2002
19 we submitted a revised landscape plan which
20 incorporated comments that we received from all of
21 the reviewing agencies.

22 As we've discussed in our previous
23 status reports, the biologists have said that they
24 are satisfied with the revised landscaping plan
25 and feel that it is consistent and would not pose

1 any undue biological impacts. It's our
2 understanding that the visual resource staff is
3 still reviewing the plan.

4 And then finally, with respect to the
5 plume simulation analysis, it's our understanding
6 that the staff has all of the information it needs
7 to complete its analysis. At the same time, we've
8 requested from them a copy of their files and
9 background information, upon which they're basing
10 their calculations and we're reviewing that
11 information as well.

12 So I believe that responds to the
13 committee's questions in the area of biology.

14 HEARING OFFICER WILLIAMS: Okay.

15 Staff?

16 MS. DAVIS: Yes, this is Cheri Davis.

17 Staff is indeed very pleased with the parcel that
18 the applicant was able to acquire as habitat
19 mitigation. The parcel provides high-quality kit
20 fox habitat.

21 However, the applicant proposes to use
22 only a portion of that particular parcel as
23 mitigation for impacts. They're proposing to
24 mitigate for impacts at a two-to-one ratio for
25 habitat loss, and staff typically recommends a

1 three-to-one mitigation ratio.

2 However, because of the high quality of
3 this particular parcel, staff are willing to
4 accept the use of this parcel as mitigation, of
5 the entire parcel as mitigation. The actual ratio
6 would fall somewhere between a two-to-one ratio
7 and a three-to-one ratio, and staff will be
8 recommending that the applicant use the entire
9 parcel as mitigation and that any future impacts,
10 should there be any during construction, for
11 instance, would be mitigated at a three-to-one
12 ratio using another property.

13 If you have no further questions, I'll
14 go on to the landscaping and visual issue.

15 HEARING OFFICER WILLIAMS:

16 Mr. Wheatland, do you have any comments based on
17 what staff --

18 MR. WHEATLAND: No, this is news to us,
19 so this is the first time -- Do you want to --

20 MS. STRACHAN: Actually, we have talked
21 to staff about that, and specifically if
22 additional mitigation were required it was with a
23 mitigation bank in the local area or equivalent,
24 but that is a discussion that we have had with
25 staff on it.

1 HEARING OFFICER WILLIAMS: Okay.

2 Yes, continue, please, Ms. Davis.

3 MS. DAVIS: And responding to your
4 second question regarding the landscaping plan and
5 its relation to visual resources, this is another
6 issue. Of course, that's been the subject of
7 numerous workshops and remains a contested issue.
8 The landscaping plan does not adequately address
9 the visual resources concerns of staff, and, in
10 fact, exacerbates the impacts that we identified
11 in the preliminary staff assessment.

12 However, we understand that this
13 landscaping plan was necessary for biological
14 reasons, but staff still finds that there will be
15 a significant impact from a visual resources
16 standpoint.

17 Staff did put a considerable effort into
18 attempts to develop a compromise landscaping plan,
19 and to work with the US Fish and Wildlife Service
20 and the California Department of Fish and Game,
21 trying to find one that would be a win-win
22 scenario that would satisfy both visual and
23 biological concerns; however, that was
24 unsuccessful because of concerns over the kit fox.

25 Moving on to the plume analysis, staff

1 completed the visual simulations of the cooling
2 tower and the HRSG plumes under clear sky and
3 cloudy conditions. Because of similarities with
4 several other projects and the desire to have a
5 consistent approach, this aspect of the analysis
6 is still undergoing discussions, and staff is not
7 prepared to discuss any other conclusions at this
8 time.

9 HEARING OFFICER WILLIAMS:

10 Mr. Wheatland?

11 MR. WHEATLAND: No, I have no comments.

12 HEARING OFFICER WILLIAMS: Okay.

13 Mr. Sarvey?

14 MR. SARVEY: No.

15 HEARING OFFICER WILLIAMS: Okay. I

16 understand that Ms. Joanne Young is back on the
17 phone?

18 MS. YOUNG: Yes.

19 HEARING OFFICER WILLIAMS: Yes.

20 Ms. Young, good morning. I see here that on the
21 blue card that I received from the public advisor
22 that you represent the Pacific Northwest
23 organization; is that right?

24 MS. YOUNG: Yes.

25 HEARING OFFICER WILLIAMS: Could you

1 just give us some background on who that is and
2 who you are?

3 MS. YOUNG: I'm at Pacific Northwest. I
4 have been following the East Altamont energy
5 facility, and I have called into the conference as
6 a matter of learning and interest. I have no
7 comment.

8 HEARING OFFICER WILLIAMS: Oh, I see.
9 Okay, that's fine. Thank you.

10 Okay. I think, then, we are prepared to
11 move on to item number three, which is --

12 COMMISSIONER PERNELL: Mr. Williams, I
13 have a question for the staff on the landscaping.

14 You indicated that you weren't
15 successful in talking to the other agencies in
16 regards to visual. My question is have you
17 thought about or do you have any other additional
18 mitigation plans that might satisfy that area?

19 MS. DAVIS: The staff has been unable to
20 develop any mitigation that would effectively
21 screen the plant without creating biological
22 impacts.

23 MS. DeCARLO: We did try to come up with
24 what we thought would be the ideal mitigation
25 scenario, and it failed to satisfy both

1 landscaping, or both visual and biology.

2 CHAIRMAN KEESE: So you're satisfied
3 with what it does in the biological.

4 MS. DeCARLO: Correct.

5 MS. DAVIS: Correct.

6 CHAIRMAN KEESE: Unfortunately, it
7 doesn't meet your standard on visual.

8 MS. DeCARLO: Right.

9 CHAIRMAN KEESE: Okay, thank you.

10 COMMISSIONER PERNELL: Thank you.

11 MS. DAVIS: Yeah, the kit fox are very
12 sensitive creatures.

13 MR. WHEATLAND: And they don't like tall
14 trees.

15 COMMISSIONER PERNELL: And they're
16 protected.

17 MS. DAVIS: And they don't like
18 landscaping.

19 HEARING OFFICER WILLIAMS: Okay. I
20 guess we can move on to noise.

21 Mr. Wheatland?

22 MR. WHEATLAND: All right, moving on to
23 noise. At the May 10th scheduling conference the
24 staff stated at that time that they had all the
25 information they need to complete the noise

1 analysis. The applicant is continuing to work to
2 try to improve and mitigate the impacts of noise.
3 We're continuing to strive to narrow the
4 differences between the applicant and the staff.

5 And, toward that end, on July 12th,
6 2002, the applicant notified the staff that the
7 applicant has obtained an option for the adjacent
8 property with the closest sensitive receptor
9 whereby the property will no longer be used for
10 residential purposes, which should help immensely
11 in terms of mitigating the impacts at the closest
12 receptor.

13 In addition, at the suggest of the
14 staff, the applicant has formally offered the
15 three remaining residents nearest the energy
16 center to provide them with a sound attenuation
17 package whereby the homes can be upgraded as
18 necessary without cost to the homeowner to provide
19 replacement of single-pane windows with dual-pane
20 windows and other measures to help insulate the
21 residences from noise.

22 HEARING OFFICER WILLIAMS: Staff, I take
23 it that these new disclosures, will you address
24 those in the FSA as well?

25 MS. DAVIS: Yes, we will.

1 HEARING OFFICER WILLIAMS: Okay.

2 Mr. Sarvey, do you have anything on
3 noise?

4 MR. SARVEY: I just had one question and
5 it was in relation to the Mountainhouse
6 development and how close it would be to the
7 plant, and maybe the applicant knows those
8 answers.

9 MR. WHEATLAND: It's my understanding
10 the Mountainhouse development at its nearest point
11 is approximately one mile from the plant.

12 MR. SARVEY: So there should be no noise
13 impacts, then.

14 MR. WHEATLAND: There should be no noise
15 impacts.

16 MR. SARVEY: Thanks.

17 HEARING OFFICER WILLIAMS: Okay. Then
18 we're prepared to move on to number four, which is
19 worker safety and fire protection.

20 MR. WHEATLAND: Yeah, this may be an
21 issue that the staff will wish to address, but the
22 applicant doesn't believe that there are any
23 significant impacts on emergency services due to
24 the project and that we haven't proposed any
25 mitigation measures in that area.

1 We understand that the emergency
2 services will be provided under existing LORS,
3 and, to our knowledge, the staff hasn't found any
4 significant impacts nor proposed any specific fire
5 station mitigation measures.

6 HEARING OFFICER WILLIAMS: Staff?

7 MS. DAVIS: That is correct. Staff has
8 evaluated all the information available and finds
9 that the response times will be satisfactory, even
10 if the mutual aid agreement between the Tracy Fire
11 Department and the Alameda County Fire Department
12 is terminated.

13 The data provided by the applicant
14 regarding the need for emergency services confirms
15 that there is a very low likelihood that the
16 emergency services would be needed at this
17 facility, and that further bolsters staff's
18 position.

19 HEARING OFFICER WILLIAMS: Mr. Sarvey?
20 I think you had an issue with, or a question on
21 this.

22 MR. SARVEY: Yeah. Well, my issue is
23 related to the response time for emergency
24 services, and if you're familiar with the area,
25 for emergency services to come from Alameda County

1 they have to cross the Altamont Pass, which many
2 times is -- two to three hours is gridlocked, and
3 it's pretty inaccessible from Alameda.

4 So I thought in the applicant's interest
5 in protecting his plant, if he was going to invest
6 any money in additional services that perhaps he
7 might prod Alameda County to put a fire station on
8 the east side of the Pass. It would be more
9 accessible to his plant, and to me it's an issue
10 because it's a high fire area.

11 People are trying to frame this as,
12 well, there are very few fires at gas-fired
13 electrical plants, which I understand, but this is
14 a high fire area. And I think at times they're
15 going to need quick response, and I don't think
16 it's available with the mitigation plan that -- or
17 the plan that's outlined in the AFC, so I disagree
18 with the staff and the applicant on that issue.

19 HEARING OFFICER WILLIAMS: Okay, all
20 right. Well, I think we're going to have to wait
21 and see what's in the FSA before we can -- It
22 sounds like it's maybe something that we'll have
23 to deal with at the hearings.

24 Okay. I guess we can move on to number
25 five, which is water supply. I guess Mr. Scott

1 Busa, is it?

2 MS. MENDONCA: Scott Busa is from FPL.

3 HEARING OFFICER WILLIAMS: Oh, excuse
4 me, Mr. Busa is from FPL, so he's not with the
5 water.

6 Mr. Wheatland?

7 MR. WHEATLAND: There are three issues
8 under water and you may wish to take the
9 discussion of each of them individually. The
10 first one asks for a discussion of any agreement
11 between BBID and the Department of Water Resources
12 over the diversion of water from the Delta to
13 supply EAEC.

14 You may recall at the May 10th
15 scheduling conference that a representative from
16 DWR advised you at that time that the negotiations
17 were still going on, but that they did not
18 recommend that the Commission need to await the
19 results of that analysis in order to consider this
20 project. In other words, the negotiations were on
21 issues that were unrelated to this project.

22 And that was also confirmed in a
23 recorded conversation that the staff filed on a
24 meeting with DWR that was held on April 23rd that
25 said, "Because the EAEC's proposed fresh water use

1 does not have the potential to injure state water
2 project contractors, DWR is willing to have the
3 CEC move forward in processing the AFC."

4 So, in summary, the negotiations are
5 still going on, but they don't relate in any way
6 to the project and DWR has given the green light,
7 in terms of proceeding with this AFC.

8 HEARING OFFICER WILLIAMS: Staff?

9 MS. DAVIS: Pursuant to hearing from DWR
10 that they had no further concerns, staff did
11 continue with its analysis and is not waiting for
12 the agreement to be complete.

13 HEARING OFFICER WILLIAMS: Please
14 continue, Mr. Wheatland.

15 MR. WHEATLAND: All right. With respect
16 to the issue of any pending agreement between
17 potential recycled water suppliers and BBID for
18 the provision of water supplied to the project,
19 there was a workshop on May 28th where the staff
20 showed us a memorandum of understanding that was
21 between Inland Empire project and its water
22 supplier. And the staff asked if it would be
23 possible to have a similar MOU for this project.

24 So, therefore, on July 9th, BBID and
25 East Altamont executed an MOU which provides that

1 the East Altamont energy center will be
2 constructed in a manner that allows service of
3 recycled water without the need for further
4 retrofit to the plant, and further provides that
5 BBID will make recycled water available to East
6 Altamont to the maximum extent feasible.

7 So that MOU has now been executed and
8 ratified by the parties.

9 HEARING OFFICER WILLIAMS: Thank you.

10 Staff?

11 MS. DAVIS: It is staff's understanding
12 that the question was asking about pending
13 agreements between potential recycled water
14 suppliers and BBID, and to staff's knowledge there
15 are no such agreements, such as between the
16 Mountainhouse Community Services District and
17 BBID.

18 However, regarding the MOU between BBID
19 and Calpine, which I think is one of the subjects
20 of your item C here --

21 HEARING OFFICER WILLIAMS: Before we get
22 to that, I have just one question. And maybe I
23 just need for you to tell me whether or not staff
24 is looking at whether recycled water is available.
25 We know that it's not available from

1 Mountainhouse, because Mountainhouse has not been
2 built.

3 Has staff looked at the question of the
4 general availability of recycled water in the
5 area? Is that something that you will be
6 addressing in the FSA?

7 MS. DAVIS: Yes, we will. We have
8 looked at recycled water from a variety of
9 sources, but we do have high confidence that there
10 will be recycled water available from
11 Mountainhouse once the construction is well
12 underway.

13 HEARING OFFICER WILLIAMS: Yeah, because
14 I know that the policy, the State Water Resources
15 Board policy, that has been an issue in other
16 siting cases. And, as I understand it, the
17 committee will need to make a determination that
18 recycled water is not available, essentially, to
19 not have that policy apply.

20 So I just want to be assured that that's
21 something that's going to be dealt with in one
22 form or fashion.

23 MS. DeCARLO: Yes. Staff has
24 specifically focused on availability of recycled
25 water from Mountainhouse, but we have done a

1 general analysis about the availability of water
2 from the City of Tracy from some other sources
3 such as Discovery Bay. And that analysis will be
4 included in the FSA.

5 HEARING OFFICER WILLIAMS: Okay, thank
6 you.

7 MR. HELM: The PSA concluded the water
8 from Tracy was not --

9 HEARING OFFICER WILLIAMS: Identify
10 yourself, please.

11 MR. HELM: Oh, I'm sorry, Kris Helm with
12 the applicant.

13 MR. WHEATLAND: And the status is right,
14 in responding to you I flipped B and C, so I've
15 just responded to item number C under water supply
16 about the pending agreements between the applicant
17 and BBID.

18 MR. HELM: Right.

19 HEARING OFFICER WILLIAMS: Staff?

20 MS. DAVIS: So moving on to item C,
21 regarding pending agreements between the applicant
22 and BBID, we have evaluated the MOU between BBID
23 and Calpine, and we welcome the intent of the MOU;
24 however, it does not guarantee the delivery of
25 recycled water. And staff believes that we can

1 craft some conditions that would provide greater
2 certainty and fulfill that intent.

3 HEARING OFFICER WILLIAMS:

4 Mr. Wheatland, do you have any comment on that?

5 MR. WHEATLAND: Oh, we anxiously await
6 the staff's recommendations.

7 At this point in time, there is no
8 recycled water available from the Mountainhouse
9 development, because they have not completed
10 construction of the homes. So there is no current
11 supply to guarantee. But certainly it's the
12 applicant's intent to use recycled water on this
13 project, and a substantial investment in the
14 physical infrastructure of the plant is being made
15 so it will be able to accept recycled water as
16 soon as those supplies become available.

17 HEARING OFFICER WILLIAMS: All right.

18 MS. DAVIS: And, to clarify, predictions
19 are that recycled water will be available by 2005,
20 when the applicant intends to come on line.

21 HEARING OFFICER WILLIAMS: Great.

22 MR. HELM: The term "available" here is
23 a word of art, and so we're bantering it about a
24 bit. And so there may well be recycled water
25 available in the future to East Altamont energy

1 center and, as the MOU provides, that it will be
2 used.

3 HEARING OFFICER WILLIAMS: Right.

4 MR. HELM: But it is not proposed as
5 mitigation for any impacts to date. In these
6 proceedings we continue to evaluate the use of
7 fresh water until recycled water is available and
8 no impacts have been identified, adverse impacts
9 associated with that use have been identified yet.

10 HEARING OFFICER WILLIAMS: And as I
11 understand it, whatever the availability issue is,
12 because BBID is the local area provider, then that
13 water would have to somehow be within BBID's
14 jurisdiction.

15 MR. WHEATLAND: That's correct.
16 Mountainhouse will be providing water to BBID,
17 which BBID may then choose to provide to East
18 Altamont or other customers within its service
19 territory.

20 HEARING OFFICER WILLIAMS: Right.

21 MS. DeCARLO: And staff is just a little
22 concerned that no significant discussions between
23 BBID and Mountainhouse have occurred to date about
24 setting forth specifics on how the supply of
25 recycled will occur.

1 I understand that there have been some
2 generalized discussions, but nothing formalized.

3 HEARING OFFICER WILLIAMS: Okay.

4 Mr. Sarvey, do you have anything you
5 want to add?

6 MR. SARVEY: Yes. I support the
7 applicant's use of fresh water. I have some
8 concerns about the pathogens contained in recycled
9 water, and I think that if there are no
10 environmental impacts from the use of fresh water
11 that that would be the preferred alternative.

12 HEARING OFFICER WILLIAMS: Okay, thank
13 you.

14 So, as I understand it, then, these five
15 topic areas will, are where the issues are. So,
16 of course, that leaves a whole lot of stuff that
17 we can resolve by stipulation. And even within
18 these areas, of course, perhaps there is still a
19 means to -- there will be a means to stipulate to
20 other matters at any time.

21 So I think this certainly gives us an
22 opportunity to focus on those matters that need to
23 be addressed. And I would recommend that we all
24 try to do that, to the extent that it's feasible.

25 So, with that, I think, then, that

1 Mr. Wheatland, you have some comments on the
2 schedule. Now is the time for it.

3 MR. WHEATLAND: We have provided the
4 committee with a schedule that would both be
5 consistent with our obligations with DWR to have a
6 final decision on this project by the end of
7 November, and which also attempts to make up for
8 the lost time by the fact that we have now
9 exceeded the 12-month time period.

10 The staff has also proposed a schedule
11 to you. We would ask you to carefully weigh the
12 two schedules. We believe that the schedule we
13 have proposed is consistent with the statutory
14 direction to the Commission and with our
15 contractual obligations. We believe that the
16 proposed, the schedule proposed by the staff is
17 excessive, and there are significant opportunities
18 to reduce that schedule.

19 One of the important things I think to
20 keep in mind is that, and this has been true for
21 almost 20 years, at least, because I can remember
22 when I was a staff counsel here at the Commission,
23 we had to operate under a 12-month licensing
24 process --

25 HEARING OFFICER WILLIAMS: Don't date

1 yourself too much.

2 MR. WHEATLAND: Well, it's even longer
3 than that. I was shortening it a little bit just
4 to appear younger.

5 (Laughter.)

6 MR. WHEATLAND: But the FDOC was a
7 magical point in time, because it was generally at
8 day 180 in the Commission's proceeding, it was
9 halfway through the case. And there was an
10 expectation that if you met that date that you
11 would complete the AFC within six months, or
12 earlier.

13 And what we're talking about in this
14 case is an FDOC that was issued July 24th. What's
15 really remarkable about the staff schedule is they
16 propose a schedule that would be completed in
17 seven months after the FDOC. In other words, even
18 if the FDOC had come out on time in this
19 proceeding, the staff is offering to you a
20 schedule that would not allow you to complete your
21 decision on the case within the remaining six
22 months and meet the 12-month mandate. That's a
23 sign that there is something fundamentally wrong
24 with the schedule that the staff is proposing.

25 For many years the staff and the

1 Commission have proposed time lines for the
2 processing of the AFC, and I think it's important
3 to note that the staff's proposal exceeds all of
4 those time lines. If you measure the interval
5 between a PSA and an FSA, under the Commission's
6 time lines that interval is about 25 to 45 days.
7 The staff is proposing an interval of 55 days.

8 If you measure the interval between the
9 FDOC and the FSA, again, the staff's time line
10 proposal significantly exceeds that time line.
11 And, as I've mentioned, if you look at the last
12 six months of the case, the staff has proposed a
13 schedule that would transform that into seven
14 months.

15 So I was hoping to come in and ask you
16 to expedite the consideration of this application
17 for certification, but when I see the staff's
18 schedule what I'm pleading for is just that you
19 would keep the schedule to the standard schedule
20 that the Commission employs for every other
21 application for certification.

22 Now, I recognize that the staff has a
23 special challenge in this case, because they also
24 have to incorporate an environmental assessment
25 into the process. And I recognize that some

1 additional days may be necessary for that review.
2 But even if you add those additional days, it
3 doesn't excuse or justify a time frame of 55 days
4 for processing the FSA.

5 And, as we pointed out both in our
6 status report number five and our status report
7 number six, the Commission has, in fact,
8 successfully processed an FSA in a much shorter
9 time frame, even when it required the coordination
10 with the federal documentation. So it is possible
11 to do.

12 Again, in the Russell City case that I
13 mentioned earlier to Chairman Keese, the staff
14 told us that there they needed 30 days after the
15 receipt of the last important piece of information
16 in order to issue the FSA. And I would ask if the
17 staff can do Russell City in 30 days, even
18 accounting for the six additional administrative
19 days of review that Western is requesting, why
20 can't the staff do this in 36 days.

21 The applicant stands prepared to do
22 everything on its part to expedite the schedule.
23 We will brief this matter as quickly as the
24 committee wishes us to do so. We will submit our
25 testimony as quickly as the committee directs us

1 to do so, but I would implore you to direct the
2 staff to not think about this as an open-ended
3 process where they have as much time as they need,
4 but I'd implore you to think about this as a
5 process in which they have a statutory deadline,
6 and that they have to do the best job they can
7 within the time the law allows.

8 Thank you very much for considering our
9 request.

10 COMMISSIONER PERNELL: Question,
11 Mr. Williams.

12 HEARING OFFICER WILLIAMS: Yes.

13 COMMISSIONER PERNELL: Mr. Wheatland?

14 MR. WHEATLAND: Yes?

15 COMMISSIONER PERNELL: I'm looking at
16 your schedule and comparing it to staff's, and I
17 notice that there is no mention of the
18 coordination that staff has to do with Western.
19 You have the FSA -- and I'm on page one, you have
20 the FDOC and then you have the FSA and then
21 prehearing. And I'm looking at staff, which has
22 Western completing administrative review.

23 And I'll just ask you, are you familiar
24 with -- are you cognizant of the fact that staff
25 has to coordinate with Western?

1 MR. WHEATLAND: We absolutely are, and
2 we had a discussion with staff and Western last
3 week, trying to reach a compromise schedule. And
4 so we are very cognizant of it. We were proposing
5 30 days for the issuance of the -- after the FDOC
6 for issuance of the FSA, including the
7 coordination with Western. We looked at other
8 projects where they have issued an FSA EIR within
9 21 days after receipt of the FDOC.

10 So we thought a 30-day time period was
11 quite generous. But the time frame that we're
12 proposing in our schedule would have included in
13 that 30 days the coordination with Western.

14 And I would like to -- If I could, I
15 would like to share with you, we talked about with
16 staff a compromise schedule, sort of meeting them
17 halfway between what they were proposing and what
18 we propose here. And the compromise schedule that
19 we offered to them would have added to the date
20 that you have there, August 23rd, an additional
21 week for Western review, and an additional week
22 for final edits, which would have given the staff
23 two additional weeks from what we had proposed
24 here in our schedule.

25 And I'd like to share it with you,

1 because this is also a schedule we think is very
2 viable and might benefit from the committee's
3 consideration, so if I could pass this out to you,
4 please, and I'll pass out copies to the parties as
5 well.

6 What I'm handing out to you is a chart
7 that we shared with the staff last week. And
8 there are two columns of dates. The column on the
9 left is the column of dates that the staff
10 provided to us in terms of a September 7th final
11 edit date and publishing of the FSA, as you can
12 see from what they've now filed with the
13 committee. It slipped a couple of days. But we
14 were trying to use their dates and plot out a
15 schedule for hearings and briefs, based on the
16 September 17th date they provided to us.

17 The column on the right is a schedule
18 that we suggested to them, which would have the
19 FSA being issued on September 6th. It's later
20 than we proposed in our schedule to you, but
21 earlier than their schedule. And then it shows a
22 series of hearings which would allow the matter to
23 be submitted with reply briefs on November 1st.

24 From our perspective, one of the big
25 advantages of this schedule, if the FSA were able

1 to be issued on September 6th, is it would allow
2 the committee to hold hearings on the undisputed
3 issues even in September. And it would allow the
4 committee to begin to prepare the PMPD on the
5 undisputed issues, which, after all, is going to
6 be 90 percent of this case, even in September.

7 And what we were hoping to do is to
8 provide the committee lead time in preparing the
9 PMPD so that you wouldn't have to begin to
10 undertake that task for the entire decision once
11 the disputed issues were heard in October.

12 So this is another schedule that we
13 would offer for your consideration. It doesn't
14 get us a final decision by the end of November,
15 but it comes pretty close. So this one, you see
16 it would have the staff completing its analysis
17 August 23rd, then providing an additional week for
18 Western's administrative review, and applying an
19 additional week on that for final edits and
20 formatting and printing.

21 COMMISSIONER PERNELL: Mr. Wheatland,
22 this is, the document that you passed out, which
23 is an attempt by the applicant to revise the
24 schedule or to compromise on the schedule as you
25 see it?

1 MR. WHEATLAND: Right. This was our
2 effort to compromise with the staff on the
3 schedule to, in effect, meet them halfway.

4 COMMISSIONER PERNELL: Okay.

5 HEARING OFFICER WILLIAMS: Staff?

6 MS. DAVIS: Staff stands by the
7 schedule, at least for the final staff assessment,
8 that we submitted to the committee. We could meet
9 the September 6th date were it not for the fact
10 that we still have to, would have to get the
11 document to Western for the administrative review
12 and any followup edits.

13 I would like to point out that if you
14 look at our schedule, we have the final staff
15 assessment/EA going to Western for review on
16 September 4th, and that would be approximately 40
17 days after the final determination of compliance.
18 So we really are not proposing a schedule that is
19 that far off from what is typically needed for one
20 of our cases, were it not for the fact that we're
21 working with Western.

22 As you realize, I'm sure, staff has an
23 awful lot of projects, and, in particular, there
24 are 12 projects that are competing right now for
25 staff's time. And, in terms of high priority

1 items, like final staff assessments, preliminary
2 staff assessments, data adequacy, etc., and in
3 addition to work load, there have been a lot of
4 complex issues for this case, and a lot of
5 information coming in fairly recently that staff
6 has to evaluate.

7 There are also a number of projects that
8 we're evaluating that have similar issues and
9 staff is trying very hard to develop some
10 consistent approaches to these different projects.
11 And that also takes additional time.

12 We would like to respect the applicant's
13 need to get this project certified in a timely
14 manner, but we need to be protective of the
15 environment and public health, and be fair and
16 consistent at the same time.

17 HEARING OFFICER WILLIAMS: Thank you.

18 MS. DAVIS: I would like to add that the
19 concept that the applicant put forward in this
20 compromised schedule of having -- splitting the
21 hearings into two sets, one undisputed issues and
22 one on disputed issues, is a concept that could be
23 applied working with our final staff assessment
24 date of September 19th.

25 COMMISSIONER PERNELL: Ms. Davis, I need

1 you to kind of walk me through the relationship
2 with Western. And I know that, and perhaps maybe
3 I should ask Mr. Swanson this question, I know
4 that, and certainly this Commission appreciates
5 the coordinated effort that Western is doing in
6 our process.

7 You introduced a couple of staff people
8 and your housed here in Sacramento?

9 MR. SWANSON: Yeah, there's an office in
10 Folsom. And I'm out of our office in Lakewood,
11 Colorado.

12 COMMISSIONER PERNELL: Oh, so you're
13 traveling.

14 MR. SWANSON: Yeah, I'm traveling.

15 COMMISSIONER PERNELL: Well, welcome to
16 California. I guess my question is, as we go
17 through this case and other cases where Western
18 has an interest, and we develop the documentation,
19 is that, in your opinion, to coordination, do you
20 wait until all of the information is compiled
21 before your staff people begin to analyze it, or
22 is that -- when CEC staff get it and analyze it,
23 your staff also has it as well?

24 MR. SWANSON: Yeah, Cheri has provided
25 us with working copies of the different sections

1 of the final staff assessment, and we've
2 established a review schedule for that. And so as
3 the sections are developed they come to us and
4 they're distributed to our different specialists
5 for review. And then we provide comments back to
6 Cheri.

7 So we've been involved in the review I
8 guess the same way that the staff and management
9 is involved in the review.

10 That administrative review is our
11 approval by the approving official, and --

12 COMMISSIONER PERNELL: And are they
13 local?

14 MR. SWANSON: In this case, yes. The
15 approving official for the environmental
16 assessment is Western's regional manager at
17 Folsom. But it does have to go through our
18 general counsel which is in Lakewood before the
19 approving official can approve it for issuance, as
20 a single document, right.

21 COMMISSIONER PERNELL: I'm sorry?

22 MR. SWANSON: And it has -- And we need
23 a complete document to submit to the approving
24 official for his consideration for issuance.

25 COMMISSIONER PERNELL: But you would

1 recommend -- Along with that document would be a
2 recommendation --

3 MR. SWANSON: Right.

4 COMMISSIONER PERNELL: -- because you
5 have, your team have worked alongside the CEC.

6 MR. SWANSON: Right.

7 COMMISSIONER PERNELL: So if -- Correct
8 me if I'm wrong here, I'm just trying to get this,
9 visualize this. So that once all of the
10 information is in, and all of the -- is all of the
11 information in for us to do the FSA/EA now?

12 MS. DAVIS: We believe so.

13 COMMISSIONER PERNELL: Okay. And then
14 you are reviewing that together as a coordinated
15 effort, and again, we appreciate that.

16 MR. SWANSON: Well, we appreciate it.

17 COMMISSIONER PERNELL: So that once
18 that's done, then the packet gets sent to the
19 administrative office for Western, and we also
20 have a review period of the FSA; is that correct?
21 Once you get done with the FSA, there is some type
22 of review period? Maybe I'm not --

23 MS. DAVIS: I'm not sure.

24 HEARING OFFICER WILLIAMS: No.

25 COMMISSIONER PERNELL: There isn't?

1 HEARING OFFICER WILLIAMS: No.

2 COMMISSIONER PERNELL: Okay. All right,
3 then that's fine, that's why I said correct me.

4 HEARING OFFICER WILLIAMS: Yeah, we just
5 have a regulatory requirement that the, as I
6 understand it, the FSA has to be published two
7 weeks before we can proceed to evidentiary
8 hearing.

9 COMMISSIONER PERNELL: Right, that's the
10 two weeks. So it's not a review, it's just a
11 regulatory requirement.

12 And I guess my question is, during the
13 two weeks that we can't have hearings, that time
14 will be used for the administrative review from
15 your officials, from Western's officials?

16 MR. SWANSON: Yeah. You know, our view
17 on that is that the final staff assessment/EA, you
18 know, shouldn't be issued until it's approved by
19 Western for issuance. Essentially, the approving
20 official is approving the issuance of the document
21 to the public. That's per our policy and
22 procedures.

23 So that's why Cheri has included a line
24 item on her schedule for that administrative
25 approval by Western. In other words, at that time

1 the staff will be in a waiting mode, waiting for
2 our approving official to approve the document for
3 issuance.

4 CHAIRMAN KEESE: Okay, and we're talking
5 about what I see as eight days for Western to
6 complete it and then another week to get it out;
7 is that --

8 MS. DAVIS: Yes. We have to allow time
9 for any edits that might be necessary, as well as
10 printing of the document.

11 CHAIRMAN KEESE: Okay. Well --

12 MS. DAVIS: And that gives Western six
13 working days.

14 CHAIRMAN KEESE: Okay. What I would
15 like to ask, then, because the schedule that Major
16 talked about is a schedule that deals with the
17 practical aspects of when somebody is going to be
18 around, as far as what I've heard today, I see
19 five issues, five topics with maybe eight or nine
20 issues.

21 I don't see that there is going to be an
22 excess need for testimony. I believe that the
23 issues are going to be pretty clear cut. They're
24 going to be positioned, let's take the fire
25 station issue. I mean, we're not going to need to

1 take a whole lot of testimony. It's going to be a
2 very clear-cut issue. We're going to say staff
3 and the applicant are going to be in agreement,
4 and you're going to suggest that there is another
5 factor that should be taken into consideration,
6 and it will be a Commission decision.

7 So it looks to me like on most of these
8 issues, that's the way we're going. We're going
9 to have clear-cut statements. It's either
10 satisfactory or it's not satisfactory. We're
11 going to handle the kit fox or we're going to
12 handle the visual whatever.

13 With that in mind, I would be optimistic
14 and hope that we could finish the evidentiary
15 hearings in two days, on the 15th and 16th. Now,
16 that's optimistic, so for that reason we would
17 suggest that we hold the 21st and 22nd as the
18 dates for the followup for the rest of the
19 testimony, if that's what -- if we need four days
20 of evidentiary hearings, that's it. That would
21 advance our schedule and we'd finish on the 16th
22 and it would take us another week if we have to go
23 another week.

24 Backing off from that 16th date would
25 give us the prehearing conference on the 7th of

1 October. Now, I guess that would have staff move
2 back about one week, because I see you had
3 suggested evidentiary hearings on the 21st. So
4 I'd like to suggest that we see if we couldn't
5 start the evidentiary hearings on the 15th-16th,
6 and I'm going to -- I believe, Mr. Wheatland, that
7 some of your contractual problems are not quite as
8 acute as they were before.

9 I will tell you that the committee is
10 going to have a very difficult time advancing
11 hearings into the September time frame. They're
12 just-- Availability is zero.

13 Let me ask staff first, can we whittle
14 six days off it?

15 MS. DeCARLO: Yes. We merely suggested
16 the October 21st date because that was the
17 indication we had about the Commissioners'
18 availability.

19 CHAIRMAN KEESE: Okay. Well, we have
20 made some adjustments --

21 MS. DeCARLO: Yeah, that works, and that
22 also works with our proposed issuance of the FSA.
23 That allows enough time for the regulatory
24 requirements, if we issue the FSA on the 19th of
25 September.

1 CHAIRMAN KEESE: Mr. Wheatland, can
2 you --

3 HEARING OFFICER WILLIAMS: I just --
4 While I'm thinking about it, excuse me,
5 Mr. Wheatland, but we will go on on the 15th,
6 obviously. So we will expect that we will proceed
7 into the evening hours to try to conclude
8 evidentiary hearings by the 16th.

9 MR. WHEATLAND: Okay. Could we begin
10 the evidentiary hearings on October 7th with air
11 quality, and that way I think it will give us more
12 of a chance to be able to actually --

13 CHAIRMAN KEESE: You want the prehearing
14 conference and the hearing on the same day, or --

15 MR. WHEATLAND: Well, maybe move the --
16 Just maybe set the prehearing conference prior to
17 the 7th or do it by telephone or in some form,
18 because if we could --

19 CHAIRMAN KEESE: What state do you want
20 to hold them in?

21 MR. WHEATLAND: Whichever state you're
22 located in is fine with me.

23 CHAIRMAN KEESE: Vancouver, try
24 Vancouver.

25 (Laughter.)

1 MR. WHEATLAND: It's a beautiful city,
2 I'd be happy to go there.

3 But if we were able to use that 7th for
4 evidentiary hearings, that would give us a much
5 better chance of actually concluding by the 15th
6 and 16th.

7 HEARING OFFICER WILLIAMS: Well, my
8 thought is that a better approach, and this is my
9 opinion, a better approach would be to have the
10 parties try to work together to stipulate to as
11 many issues as possible between the issuance of
12 the FSA and the prehearing conference on the 7th.

13 And to the extent that we can stipulate
14 issues out, then I think it's the committee's will
15 that we proceed to evidentiary hearings with the
16 notion of completing those evidentiary hearings on
17 the 15th and 16th.

18 MR. WHEATLAND: All right. We have an
19 availability issue on the 15th and 16th, and if we
20 could do it on the 7th for that one issue, then I
21 think we would be able to have everything else
22 done on those two days.

23 We can commit to having our testimony
24 filed, you know, a full week before the 7th so
25 that everybody will have a copy of the testimony.

1 COMMISSIONER PERNELL: Mr. Wheatland, it
2 appears to me that we, including staff and
3 Western, are trying desperately to work with you
4 here.

5 MR. WHEATLAND: Right.

6 COMMISSIONER PERNELL: The chairman has
7 stated some availability issues.

8 CHAIRMAN KEESE: What are the bad three
9 weeks?

10 MR. WHEATLAND: Just one day, just the
11 15th-16th. We have one witness who is not
12 available on only those two days. So if we were
13 able to schedule that witness for October 7th, and
14 if you take that testimony on October 7th for that
15 one witness --

16 HEARING OFFICER WILLIAMS: Who is that
17 witness?

18 MR. WHEATLAND: Mr. Rubenstein.

19 CHAIRMAN KEESE: And the 21st doesn't
20 work either?

21 MR. WHEATLAND: The 21st would work, but
22 that would push us later.

23 COMMISSIONER PERNELL: No, the 21st is
24 not a good date.

25 CHAIRMAN KEESE: You know, it's

1 difficult to --

2 COMMISSIONER PERNELL: Mr. Chairman,
3 could we go off the record and have a brief
4 conference?

5 CHAIRMAN KEESE: All right. We'll take
6 a brief moment here.

7 (Brief recess.)

8 HEARING OFFICER WILLIAMS: Back on the
9 record. Did you have -- I saw you conferring with
10 Mr. Wheatland.

11 MR. WHEATLAND: I wanted to mention very
12 briefly that it's our understanding that many of
13 the sections have already been reviewed, Western
14 has done their initial review of many of the
15 sections of the FSA when the staff originally --

16 HEARING OFFICER WILLIAMS:
17 Mr. Wheatland, let's not really revisit that.
18 Let's just focus on what we've addressed thus far.
19 I mean, for practical purposes we're looking at
20 the 7th, and completing evidentiary hearing on the
21 14th and the 15th --

22 MR. WHEATLAND: Or 15th and 16th.

23 HEARING OFFICER WILLIAMS: Excuse me,
24 yes.

25 CHAIRMAN KEESE: Unless you want to work

1 on a holiday.

2 HEARING OFFICER WILLIAMS: Unless you
3 want to work on a holiday.

4 MR. WHEATLAND: The applicant is
5 prepared to.

6 (Laughter.)

7 HEARING OFFICER WILLIAMS: I mean, I can
8 put it on the schedule.

9 COMMISSIONER PERNELL: Is the applicant
10 prepared to pay overtime for staff?

11 (Laughter.)

12 MR. WHEATLAND: If it wasn't a conflict
13 of interest, we'd love to do it.

14 HEARING OFFICER WILLIAMS: I don't know
15 about reporting services on the holiday and
16 whatever, but certainly, you know, we'll block it
17 off.

18 MR. WHEATLAND: The applicant is
19 prepared to meet on that date.

20 HEARING OFFICER WILLIAMS: Okay. Well,
21 we'll block it off, and if we can do it, we'll do
22 it.

23 MS. DeCARLO: So the committee is
24 anticipating the 7th as the first day of
25 evidentiary hearings?

1 HEARING OFFICER WILLIAMS: No, no, the
2 prehearing conference on the 7th.

3 MS. DeCARLO: Okay, and the 15th and the
4 16th --

5 CHAIRMAN KEESE: Yeah, there just is no
6 availability.

7 MS. DeCARLO: Okay.

8 CHAIRMAN KEESE: There is no
9 availability the two weeks before that. I'm
10 sorry, that's just the way it is.

11 You know, with rose-colored glasses,
12 there is a possibility that either in the FSA,
13 which would be delightful I'm sure to the
14 applicant, you'll have a compromise, an acceptable
15 compromise in there, or we will work it out in a
16 workshop on the 7th.

17 MR. WHEATLAND: Mm-hmm.

18 CHAIRMAN KEESE: Those are
19 possibilities. I would say if the applicant
20 cannot have a witness during that period, we can
21 delay that issue or hold that issue over to the
22 21st, which I know is not the applicant's
23 druthers, but --

24 MR. WHEATLAND: Well, we'd much prefer
25 to have that issue within our control to effect

1 our destiny, so we will work on that. Thank you.

2 CHAIRMAN KEESE: Okay. And then I guess
3 what we have to figure out is we'll do some
4 surveying and see what happens if we work on that
5 Monday. But it isn't the biggest holiday in my
6 cycle, and I'm sure that staff would be allowed
7 compensatory time off if they worked on a holiday.
8 We'll have to find out what the rules are, from
9 our standpoint.

10 MR. WHEATLAND: All right.

11 CHAIRMAN KEESE: Does the court reporter
12 know whether, is that a sacred holiday?

13 (No audible response.)

14 CHAIRMAN KEESE: Okay.

15 COMMISSIONER PERNELL: Let me just ask,
16 Mr. Chairman --

17 CHAIRMAN KEESE: We're going to ask
18 Mr. Sarvey.

19 COMMISSIONER PERNELL: And Mr. Swanson.

20 CHAIRMAN KEESE: And Mr. Swanson.

21 MR. SWANSON: Yeah, if you decide to
22 have a hearing on the 14th it wouldn't be a
23 problem; is that what you're -- Yeah.

24 MR. SARVEY: October 7th is the only day
25 that would be a problem for me, and I'll just

1 submit my paperwork. I don't need to attend the
2 prehearing conference.

3 CHAIRMAN KEESE: Okay.

4 HEARING OFFICER WILLIAMS: Okay. I
5 think, then, unless anyone has anything further to
6 add, this will conclude the conference.

7 Mr. Wheatland?

8 MR. WHEATLAND: Not to complicate your
9 life, but it would be helpful for our planning
10 purposes to have an idea of when you would want us
11 to submit our testimony, assuming hearings that
12 would commence on October 14th or 15th.

13 HEARING OFFICER WILLIAMS: Generally --

14 CHAIRMAN KEESE: Do you want to just
15 take the schedule and back them out?

16 HEARING OFFICER WILLIAMS: Probably a
17 week prior to, at least a week prior to the 14th,
18 and again, the matter of stipulations and that
19 sort of thing, we'd probably like to see those
20 generally a week, count back a week from the 14th.

21 MR. WHEATLAND: Okay.

22 MS. DeCARLO: If I may, staff would
23 request a little longer than that, because of the
24 complexity of the issues, and because we are
25 having a prehearing conference on the 7th it would

1 be nice to see the applicant's testimony prior to
2 that, to be able to determine what our position is
3 relative to that, and to --

4 HEARING OFFICER WILLIAMS: Okay. That
5 is a good point. How about the 1st, around
6 October 1st?

7 MR. WHEATLAND: What staff is
8 essentially saying to you, that they want nine
9 months to prepare the FSA and they want to give us
10 ten days then to prepare our testimony --

11 HEARING OFFICER WILLIAMS: Well, you
12 said you'd be prepared.

13 MR. WHEATLAND: Yeah, we can. I'm just
14 pointing out the timing of it.

15 HEARING OFFICER WILLIAMS: So you've
16 already conceded that point.

17 MR. WHEATLAND: I'm just pointing out
18 the timing of it.

19 What day of the week would the 1st be?

20 HEARING OFFICER WILLIAMS: Sometime
21 around the 1st, whatever --

22 CHAIRMAN KEESE: That's a Tuesday.

23 HEARING OFFICER WILLIAMS: So prefiled
24 testimony and stipulations on the 1st.

25 MS. DeCARLO: That would work for staff.

1 HEARING OFFICER WILLIAMS: Okay. That
2 will then conclude our proceedings this morning.

3 Thank you.

4 MS. DeCARLO: Thank you.

5 MR. WHEATLAND: Thank you.

6 (Thereupon, at 11:39 a.m. the hearing was
7 concluded.)

CERTIFICATE OF REPORTER

I, PETER PETTY, an Electronic Reporter,
do hereby certify that I am a disinterested person
herein; that I recorded the foregoing California
Energy Commission scheduling hearing; that it was
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I further certify that I am not of
counsel or attorney for any of the parties to said
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IN WITNESS WHEREOF, I have hereunto set
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